

Our ref: FOI-2023-10005

24 March 2023

Discloser

Emailed to: foi+request-9823-789644b5@righttoknow.org.au

Dear Discloser

Freedom of Information request – Access decision

I refer to your request of 23 January 2023 made to this Office under the *Freedom of Information Act 1982* (FOI Act) for access to documents in the following terms:

Under the Freedom of Information Act 1982 (Cth), I request access to the documents that Mark Anstey relied on to make the finding, or draw the conclusion, that the Office of the Commonwealth Ombudsman “cannot take any action that would cause an agency to reinvestigate a PID ... because the PID Act does not provide a mechanism for a finalised PID investigation to be reopened”, even though it is patently obvious, according to the provisions of the Public Interest Disclosure Act 2013 (Cth), that the term “investigate”, in the context of investigating disclosable conduct contained in a public interest disclosure that has been allocated to an agency for investigation, extends to the “reinvestigation” of disclosable conduct contained in a public interest disclosure that has been allocated to an agency for investigation.

I apologise for the delay in processing your request. This Office applied to the Information Commissioner under s 15AC of the FOI Act and was granted an extension of time of 15 days to process your request. This was in the context of multiple FOI requests and to enable consultation and was not considered excessive.

Decision

I am an officer authorised under s 23 of the FOI Act to make decisions in relation to FOI requests. This letter constitutes my notice of decision.

I have identified two (2) documents relevant to your request. The documents are the *Public Interest Disclosure Act 2013* (Cth) (PID Act) and the *Ombudsman Act 1976* (Cth) (Ombudsman Act). I have decided to refuse access to the documents in full.

I have set out my findings and reasons for refusing access in **Attachment A**.

Our Office identified the documents by consulting with relevant officers and searching external electronic document systems.

Review rights

Information about your review rights is at **Attachment B**.

Contacts

You may contact me via email at information.access@ombudsman.gov.au or via telephone on 1300 362 072.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mulipola', is positioned above the printed name.

Steven Mulipola
Senior Legal Officer
Legal Teams

Influencing systemic improvement in public administration

Reasons for decision – FOI-2023-10005

Material taken into account

In making my decision I had regard to the following:

- the terms of your request dated 23 January 2023
- the content of the documents to which you sought access
- consultations with relevant Ombudsman officers
- relevant provisions of the FOI Act
- guidelines issued by the Australian Information Commissioner (Oaic) under s 93A of the FOI Act, available at www.oaic.gov.au (FOI Guidelines), and

Findings of fact and reasons for decision

After consultation with the relevant Ombudsman officer named in the request, I am satisfied that the only documents that reasonably fall within the scope of your request are the PID Act and the Ombudsman Act.

Section 12 of the FOI Act provides that Part III (Access to Documents) does not apply to certain documents, including a document that is available for public purchase in accordance with arrangements made by an agency: s 12(1)(c) of the FOI Act. The Federal Register of Legislation provides that the PID Act and Ombudsman Act can be purchased:

“HOW TO GET PRINT COPIES

Printed versions of most documents on the Federal Register of Legislation can be ordered using the "Buy print copy" tab. Special orders can also be made by contacting the current print on demand provider, LitSupport (TIMG) on 07 3223 9225 or by email [to FEDlegislation@timq.com]...

Payment can be made via a secure online payment site with Visa, MasterCard or by invoice. If you are likely to place multiple orders you can create an account to save details such as your delivery address.”

As these documents are publicly available online and can be purchased through the Federal Register of Legislation managed by the Office of Parliamentary Counsel access under Pt III of the FOI Act does not apply. Your request is, accordingly, refused.

REVIEW RIGHTS

Internal review

You can request internal review within 30 days of you receiving this decision. An internal review will be conducted by a different officer from the original decision-maker.

No particular form is required to apply for review although it will assist your case to set out the grounds on which you believe that the original decision should be changed. Applications for internal review can be made:

- via email to information.access@ombudsman.gov.au
- by mail to Commonwealth Ombudsman GPO Box 442 Canberra ACT 2601

If you choose to seek an internal review, you will afterward have a right to apply for Information Commissioner review (IC review) of the internal review decision.

Information Commissioner review or complaint

You also have the right to seek IC review of this decision. For FOI applicants, an application for IC review must be made in writing within 60 days of the decision. For third parties who object to disclosure of their information, an application for IC review must be made in writing within 30 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

While there is no particular form required to make a complaint to the OAIC, the complaint should be in writing and set out the reasons for why you are dissatisfied with the way your request was processed. It should also identify the Ombudsman's Office as the agency about which you are complaining.

You can make an IC review application or make an FOI complaint in one of the following ways:

- online at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/>
- via email to foidr@oaic.gov.au
- by mail to GPO Box 5218 Sydney NSW 2001, or
- by fax to 02 9284 9666.

More information about the Information Commissioner reviews and complaints is available at its website: www.oaic.gov.au/freedom-of-information/foi-review-process